

## Marquette Law Review

---

Volume 50

Issue 4 June 1967: 50th Anniversary Issue

Article 6

---

# Lawyers in American Society 1750-1966

James Willard Hurst

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

---

### Repository Citation

James Willard Hurst, *Lawyers in American Society 1750-1966*, 50 Marq. L. Rev. 594 (1967).

Available at: <http://scholarship.law.marquette.edu/mulr/vol50/iss4/6>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

# LAWYERS IN AMERICAN SOCIETY

## 1750-1966

JAMES WILLARD HURST\*

Let us consider who the lawyer has been in American society over the past two hundred years. I choose the last two hundred years because it is not until one is past the middle of the eighteenth century that his society is complex enough to afford the luxury of a specialized professional legal class of size or influence. To ask who any man in society is, presents a most complex question. A man in society is typically the product of the interplay of several roles. The lawyer has played at least three salient roles in the last two hundred years of American history. Each of these roles has its history, of which I can make only brief summary here.

First the lawyer has been a man earning a living. Second, he has, in the Bar, collectively constituted one of the key institutions of social order in our history. And third, he has been a professional man. It is the history of those three roles—the lawyer as a man earning a living, the lawyer as a part of the Bar serving a function in the creation and maintenance of social order, and the lawyer as a professional man—which I would like to examine. As we examine them, I suggest that events tend to fall on either side of the watershed set by the decade of the 1870's. For there have been great changes in our profession, stemming particularly from the period immediately following the Civil War.

### *A Man Earning a Living*

The role most tangible, most easy to grasp, is that of the lawyer as a man earning a living. What has he done for which people have been willing to pay him? Where has he done it?

As of the late 1800's, and well into the late nineteenth century, the most conspicuous role of the lawyer is as an advocate in situations of contention, situations of difference or controversy. This particularly means the lawyer as an advocate in contentious situations in a courtroom. Litigation was the traditional focus of law practice. This was not accidental. This focus on the lawyer as courtroom performer in contention was related to the nature of the growth of our law from the late eighteenth into the late nineteenth century. For various reasons, the growth of the law during this period lay largely in the work of the appellate courts. The period from about 1810, first marked by Johnson's reports in New York, through the 1890's, was a period of broad-scope judicial lawmaking

\*Vilas Professor of Law, University of Wisconsin. B.A., Williams College, 1932; LL.B., Harvard University, 1935.

—the period of the creation of the American common law. Since we so often turned to the courts to define and implement social values in that period, quite naturally the most dramatized, the most conspicuous role of the lawyer was as a courtroom performer.

Since the late nineteenth century there has been much change in this respect. What happens in courtrooms in contentious situations is still of fundamental importance in the working of our legal order. In many ways, this is the place of the showdown; this is the place—in controversy, in court—where issues may be brought to a critical moment. While still recognizing the continued importance of litigation, we should also recognize that the relative importance of the lawyer's role as an adversary in courtroom contention has decreased as compared with the rise of other roles. Today, to a much larger degree than a time such as the first half of the nineteenth century, the lawyer's role in court tends to be an administrative one. The lawyer is more often in a courtroom to regularize transactions, to obtain the legitimation of a document, or to secure the legitimation of the action of a trustee, than he is to play a role as an advocate in controversy.

In part, this shift of focus away from courtroom contention has reflected a basic shift in American society toward a more matter-of-fact, cost-conscious approach to human relations. In the early nineteenth century the courtroom drama was one of the more vivid aspects of life—a great arena in which men's interests played out in colorful, engrossing form. As one looks back, for example, at accounts of Abraham Lincoln, as circuit-riding lawyer in the Illinois of the first half of the nineteenth century, one can see the courtroom existed in the atmosphere of what Roscoe Pound once called the sporting or the game theory of law: that the essence of the matter was the contest, rather than the resolution.<sup>1</sup> For various reasons the twentieth century has become more matter-of-fact, more cost-conscious, and less willing to resort to litigation for anything except a calculated gain worth the price. As this more matter-of-fact temper has grown, the relative place of courtroom contention has tended to decline.

To an increasing degree the twentieth century lawyer as advocate appears in other forums than the courtroom. For one thing, the lawyer is more prominent in legislative hearings and legislative committee rooms representing the interests of his clients. The scope of legislation has expanded in the last fifty to seventy-five years, particularly through expanded use of the purse power. Consider what a large part of modern law practice now centers about taxation. Moreover, as the sphere of regulatory law, primarily that

<sup>1</sup> POUND, *THE SPIRIT OF THE COMMON LAW* 124, 125 (1921).

affecting the economy has grown, there has been a great extension of statute law. To a degree which would have seemed quite strange to his mid-nineteenth century counterparts, these changes have tended to bring the lawyer into action as a client-representative in legislative matters. Even more striking at mid-twentieth century, is the extent to which the lawyer appears as advocate for the client's interest in executive offices and before administrative tribunals. This, too, was a type of practice substantially unknown to the lawyer of 1850, to whom client representation spelled courtroom.

But this all has to do with the lawyer as advocate, wherever his forum of advocacy be. As we ask what does the lawyer do for which people pay him fees, and where does he do it, we must recognize that starting in the late nineteenth century there was a great enlargement of the lawyer's role. It was not as an adversary in contention—whether in a legislative, executive, or judicial forum—but as planner, arranger, and administrator of affairs. Samuel Williston quotes an able member of the Boston Bar who said that a lawyer, above everything else, is a man who brings things to pass, a man who helps to make things constructively happen. The observation is on target in identifying the focus of the modern lawyer's business. Of course, there were nineteenth century antecedents—lawyers who by no means spent all their time arguing cases in courtrooms. Particularly, in the great enterprise of translating the public domain into private ownership from about 1820 to well into the turn of the century, the bar played an immense administrative role in the creation of private land titles. But this nineteenth century role, while it was there, is dwarfed by comparison with the range of the lawyer's twentieth century role as planner, arranger, and administrator of men's relationships.

The reasons for this go deep into the nature of modern society. For one thing, the increased specialization, the increased division of labor in this society, means that we confront many more multi-interest situations than the nineteenth century confronted. The mid-century lawyer, for example, rarely dealt with a problem of arrangements comparable to that faced by mid-twentieth century lawyers in setting up and launching a modern shopping center in its network of real estate, regulatory, tax, finance and credit problems. In this high-division-of-labor society, situation after situation involves not merely one-to-one relationships, as classically expressed in a plaintiff-defendant lawsuit, but rather the interlock of many interests. Underlying is the increased demand on the bar to

---

<sup>2</sup> WILLISTON, *LIFE AND LAW* 109 (1941).

be of use to clients in bringing things to pass, as Samuel Williston's lawyer put it. This trend in the law practice is also advanced by the increased scope of legal regulation. This pattern means that in more business situations than the nineteenth century lawyer would ever confront, the lawyer must be deeply involved with the businessman as he plans a marketing strategy, as he adjusts the shape and the organization of his business to the structure of the tax laws. Such affairs do not present, primarily, problems of contention, but problems of planning. Again, the increased importance of credit and finance in the modern economy has been a prime pressure in bringing the lawyer more and more into play as a planner and arranger of affairs.

These considerations deal in a measure with what the lawyer does and where he does it. We need also ask, for who does he work, and how does he organize the economics of his practice, as a man earning a living. There is one marked element of continuity here. Most lawyers today continue, as did most lawyers in the nineteenth century, to serve private clients for fees paid by them. From the turn of the century, however, we note a pronounced movement in the economic organization of this service to private fee-paying clients. There has been a marked increase in the relative amount of law practice done by firms as compared with law practice done by individuals. However, the percentage has remained stable for about a generation and seems now to have reached a plateau. Today, approximately 25 per cent of lawyers practice in firms of one size or another. Although in recent years there seems to be a decrease in the relative number of lawyers in single practice, a gain in the number of lawyers in salaried practice probably takes up that slack. Professor Joel Handler's recent study of the nature of law practice in a moderate-size midwestern city, suggests that perhaps lawyers who formally practice in firms are often actually office sharers, and not, in functional fact, partners. There may be some illusion in the figures on law firms,<sup>3</sup> and further study may be needed in this area. But it can be said that although most lawyers continue to be private practitioners, there was accomplished by about the 1920's a rather decisive move toward a greater percentage of practice in firms.

One important change, which is out of proportion to the number of lawyers involved, is the relatively recent appearance of the salaried lawyer. We have always had elected public officers who were lawyers. This is an element of continuity that reaches back to our beginnings. Lawyers have been important in the operations of

---

<sup>3</sup> HANDLER, *PRAIRIE CITY LAWYERS* 42, 43 (1966).

the legislative branch to an extent disproportionate to their numbers. This stems from the fact they have usually occupied central places in the legislature, in committees which do the more important work. More recent (with substance since the 1920's) is the appearance of two other types of appointed, salaried lawyers: the government staff lawyer and the corporation house counsel. These two types of practitioner have brought into the practice of law and into the social role of the bar elements which deserve more study than they have yet had. The government staff lawyer and the corporation house counsel both contribute to this society's tendency to become more and more administered and bureaucratized. The increasing presence of these salaried lawyers in the great public and private organizations of our time add significant elements of institutional continuity, and, perhaps, dangerous elements of institutional complacency. Finally, to the ranks of the salaried lawyers, we must add the appearance in substantial numbers of the academic lawyer. The law school teacher has become an important segment of the bar. This is partly because the law school course has become the standard path of the entry into practice. But he has also become important because he enjoys a greater degree of flexibility in working schedules than the private practitioner can usually afford. Thus, the availability of the academic lawyer has added an important staff element to enterprises of law revision and law reform. As the activities of the organized bar extend increasingly into law revision, a bar committee will operate through staff work of lawyers drawn from the law schools. This is a phenomenon which is having material impact in the role of the organized bar, and it is a matter of relatively recent appearance.

#### *A Member of the Bar*

What we have examined so far regards the lawyer as a man earning a living. The lawyer's second role which has had a history of its own, is that of the lawyer as a member of the bar, as a part of the totality of lawyers constituting an important agency of social organization. It is too narrow a view to define the instruments of government as the executive, legislative, and judicial branches. Realism requires that we recognize that lawyers in their collective impact, as the bar, constitute in effect a fourth arm of government. This collective contribution to order is what Mr. Justice Holmes was referring to when he said that the glory of lawyers, like that of men of science, is more corporate than individual.<sup>4</sup> It is also what Edward G. Ryan meant when, in 1873, he pointed out that

<sup>4</sup> "Daniel S. Richardson," in *THE OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES*: Compiled by Mark DeWolfe Howe (1962).

every lawyer in his law office is effectually a judge, and that more matters are adjudicated in lawyers' offices than ever reach the courts.<sup>5</sup>

As the advocate or representative of an individual who either is in trouble, or needs help to stay out of trouble, the lawyer contributes an essential element to our system of separation of powers. The fact that there is in society, as a working reality, a body of specialized, skilled advocates and counselors, who earn their living by fees from private, non-official persons; the fact that such lawyers enjoy economic independence derived from earning a living from fees from private non-official persons and can hold themselves as counselors and advocates without the grace or favor of officialdom—this availability of the private practitioner to private persons must be counted an essential element in the working Bill of Rights. This pattern offers a basis for checking abuse of power: whether abuse of public or of private power, whether through a lawyer acting for a complaining party, or through a lawyer acting in defense. The lawyer as client caretaker provides the dynamics of the principle that in this society all power should be constitutional power—that all power, not just public but private as well, should be responsible power, exercised subject to the check of someone other than the power holder. Thus, perhaps the central distinctive feature of Western legal order is to a large degree in the charge of the bar.

However, to put the matter only so may put it in too negative a way. The availability of lawyers as private-fee advocates and counselors to private persons is not merely a matter of checking abuse of power. To a significant degree it is also a way to set power in motion for positive ends. The lawsuit in which an individual stands forth to assert a position, whether as plaintiff or defendant, remains significant to bring changes in public policy. In the nineteenth century this initiative resulted in the body of our common law. In this century, although the growing points of law have significantly shifted into the legislative and executive branches of government, the lawyer as courtroom advocate and representative still exercises potent leverage. Consider, for example, *Brown v. The Board of Education*<sup>6</sup> where the mustering of forces in the roles of courtroom plaintiffs and defendants broke a policy log jam which Congress had been unable to loosen for three preceding generations. Again, apportionment cases bear remarkable testimony to the lever-

---

<sup>5</sup> Addresses by Hon. Edward G. Ryan, Late Chief Justice of Wisconsin, delivered before the Wisconsin Law School, 1873, and Hon. Matt. H. Carpenter, Late United States Senator, delivered before the Columbia Law School, 1870. (M. J. Cantwell, Book and Job Printer, Madison, Wis. 1882).

<sup>6</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

age for social change which can be exerted through the lawsuit.<sup>7</sup> This leverage role is the positive counterpart of the more restrictive separation-of-powers role which lawyers play as private-fee advocates and counselors, against the abuse of official or private power. We must see both negative and positive sides to see the whole picture.

We saw that in appraising the lawyer as a man earning a living, one must pay increased attention in the twentieth century to the lawyer's role as planner, arranger, or administrator of affairs. We must also recognize that the bar as a totality plays a key administrative role in making this complex, division-of-labor-of-society operate from day to day. Here the bar has responded to the functional demands of the main lines of social growth during the last seventy-five years. This is a society characterized by (1) a steadily enlarging scale of operations, both public and private; (2) a related tendency toward the dominance of impersonal kinds of relationships, where men deal increasingly at long arm's length or are separated from one another by intricate chains of cause and effect; (3) more and more interlock of human relationships so that any given cause tends to spread its effects in widening circles throughout the whole society, so that what a man does must be estimated not in terms merely of its immediate effect but its effects at second, third, fourth, or even tenth remove from his action; (4) an increasing amount of deliberation or calculation of what goes on, which is natural in a society whose dynamics derive increasingly from the products of science and technology.

All these factors mean that social operations bring a heightened need for skilled handling of facts. We live by and with an increasing specialization of organized knowledge in this society, responding to these basic changes in the nature of social life. Today, the lawyer has to share with many other specialists the distinction of being a man of learning. In the nineteenth century the men of learning in the typical American community were the lawyer, the doctor, and the clergyman. No longer does the lawyer operate within such a limited circle of men of ideas. Today, he must operate with or find meaningful relationships with economists, accountants, engineers, physicists, biologists, public health specialists, public administration specialists, ecologists—the list can go on and on. Social operations demand an increased amount of skilled handling of fact, as the kinds of knowledge of facts needed in order to operate our kind of society steadily proliferate.

Part of this same picture is the factor mentioned in another connection earlier: The common law grew in the nineteenth century within a format in which issues could be posed through the clash of plaintiff

<sup>7</sup> *Baker v. Carr*, 369 U.S. 186 (1962).



and defendant—two parties, in a one-to-one confrontation. The mid-twentieth-century situation, more typically, is one in which a problem involves a confrontation of a complex of interests. This complexity is a reason why, again, we come back to the fact of the increasing fragmentation and specialization of knowledge. Along with these factors goes the fact that in the twentieth century the stakes of decision tend to be higher and higher. More and more hangs upon a correct estimation of the relation of cause and effect. The lawyer's symbol of some of the changes came as early as the Brandeis brief in *Muller v. Oregon*,<sup>8</sup> with an insistence that rules of law made sense and could operate only on the background of knowledge of relevant social facts.

Along with this demand for increased skill in handling fact goes another element. A higher degree of social organization creates a higher need for regularized, deliberative processes of decision. The nineteenth century was able to live considerably by rule-of-thumb decisions. The twentieth century can less and less afford this approach. The twentieth century needs more rationalized decision-making processes. This need inherently brings a demand for more participation, and more skill from the bar. For the bar, if it is expert in any particular dimension of social order, is expert in the organization of decision making. The symbol of this role is the movement of the lawyer in tables of organization. Abraham Lincoln's generation saw the lawyer as a man who came into the picture only after the client was already in trouble. The late nineteenth-century lawyer tended to be brought into affairs after the client—the businessman, typically—had already pretty well taken his decisions; the lawyer's part here was to arrange the formal regularity of a situation which often had already been shaped. The twentieth-century lawyer is more often found in the process of the client's decision making itself; he cannot be left out, because the greater reach of law in men's affairs demands decision making which takes the law into account as an original ingredient.

### *A Professional Man*

We have now considered the lawyer as a man earning a living and as a part of the bar, acting as an instrument to create and maintain social order. There is left the role of the lawyer as a professional man. The idea of the professional man is a concept born not of logic but of history. Historically, we have singled out certain occupations to call them professional primarily on three accounts: (1) professional men are men who possess and use a special body of ordered learning; (2) they use this ordered learning primarily in the service of others than themselves; (3) they use their learning under the discipline primarily

<sup>8</sup> *Muller v. Oregon*, 208 U.S. 412, 419-421 (1908); Felix Frankfurter, "Mr. Justice Brandeis and the Constitution" in FRANKFURTER, MR. JUSTICE BRANDEIS 49, 52 (1932).

of their own group, rather than under the discipline of any external forces. All three of these elements in the content of the professional ideal have shown substantial continuity throughout 200 years of lawyers in the United States. It is one of the real continuities of the lawyer's place in our history that he has claimed and, in varying measures at different times, in practice has asserted the role of professional man.

However, if there is a central continuity of tradition here, there have been significant changes in the living content of the professional ideal. Let us start with the third element, because it has the shortest history; at least, we know the least of it. The lawyer holds professional status in part because he belongs to a self-regulating guild, which administers its own discipline. As it has for 200 years, the bar continues to do most of the disciplining of its membership. But in practical impact this element of professional self-discipline has the most uncertain history of the various facets of the bar's professional status. In years preceding the American Revolution, the bar had reached a considerable degree of professional order. From 1800 well up to the turn of the century, a realistic judgment must be that the bar hardly existed here as an organized entity. In consequence, professional discipline in the nineteenth century was thrown almost exclusively on the courts. An exception is the short, romantic interval of the circuit-riding lawyer; to relieve the boredom of the circuit, the lawyers would gather around the tavern fire and would administer informal discipline to their fellow members on the basis of incidents that had occurred that day in court. Bar organization of a serious sort did not return in the United States until the 1870's, but even then the organized bar's functions were largely social or else largely concerned with reform of municipal politics. Not until the last fifty years does the organized bar begin to play a significant role in administering professional discipline according to the classic definition of what a profession is. The most recent invention is the creation of the integrated bar whose impact we still have to measure.

One can speak with more certainty as he examines the two other facets of professional status. A lawyer is distinguished as a professional man primarily by the two other factors: that he possesses and uses a highly specialized body of learning, and that according to the ideal of the profession, he uses this learning primarily for the benefit of someone other than himself. In the matter of professional learning we have seen marked and obvious change. Prior to the 1870's most men learned to be lawyers through apprenticeship. It is a mode of training which has obvious attractions. However, in our experience, it had less obvious, but deep, limitations; particularly, the training was too much subject to the accidents of the varying conscientiousness, experience,

and range of practice of the preceptor. The Langdell Revolution in the 1870's spelled a dramatic change in the direction of the bar as a profession. The new approach to legal training insisted that the law was a sufficiently complex and yet coherent body of experience in problems of social order, and that it must be studied in an ordered way and reduced to ordered proportions. The idea that there were principles behind the law, and not just a rag-bag collection of specific rules, was the heart of Langdell's revolution in legal education. Yet, the Langdell revolution proved of limited utility. In the first place, it took a static, taxonomic approach to law. The principles to which Langdell appealed were principles defined by tests of logic, by which one could handily classify the otherwise unruly body of case material. Moreover, Langdell evolved his principles from too narrow a base—from law reflected simply in the opinions of courts, and primarily in the opinions of appellate courts.

The Langdell revolution dominated the development of the lawyer's professional learning from about the 1870's until the early 1920's. Then occurred the realist jurisprudence revolution which set the frame and content of the approach taken in most modern American law schools which count themselves good law schools. The realists, too, preached that law must be understood as a body of principles. However, what they meant by principles was not a body of formal logical concepts, but a series of propositions as to the social ends of law and the relations between rules of law and those of social ends as means to accomplish the ends. In this sense, the realist jurisprudence of the 1920's and 1930's insisted that law must be studied functionally; it must be studied, as Karl Llewellyn liked to put it, in terms of the law jobs which men asked the legal order to do.<sup>9</sup> This meant that the realist revolution emphasized that study should be more problem-focused, and focused, particularly on problems as they are encountered by the lawyer in his office. Hence we find the response in the modern law curriculum in terms of problem-focused courses and seminars: trusts and estates, collective bargaining, tax planning. Finally, looking at the realities of twentieth-century law, the realists insisted that the law curriculum must more adequately come to grips with statute law and administrative law. The schools responded in new courses and in the growth of seminars. The organized bar responded—later than the schools—in a movement which has significance only since about 1950. The bar's response to the realist movement was by developing post-graduate legal education of a range which would appear quite alien to a nineteenth-century lawyer.

We should recognize that we have not achieved the millennium

---

<sup>9</sup> Llewellyn, *"The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method,"* 49 Yale L.J. 1935 (1940).

with the succession of the realist revolution of the 1920's and 1930's, amending the Langdellian revolution of the 1870's. We started with apprentice training. To a greater extent than we acknowledge, we still in fact rely on apprentice training, with all of its rather haphazard incidents, to train modern lawyers in a large part, if not the bulk, of their actual practice. Both the schools and organized bar may be fairly accused of having grossly lagged in developing properly sophisticated legal training. Such training calls on us to reduce to teachable proportions—which means, in the first place, to research—the areas of negotiation and mediation, the handling of interviews to elicit factual material, drafting skills, and skills in relating non-legal factual knowledge (economic knowledge particularly) to the resolution of problems which clients bring into the office. Most of these skills, without which a modern lawyer cannot conduct a practice of any substance, still receive quite inadequate attention in the law school or in post-graduate legal education today, compared with the demands which the practice makes for these skills. In view of the little investment we have yet made in approaching these problems, it would be premature to say that these are problem areas which cannot be more efficiently handled by an organized education approach than by the hit-or-miss, *de facto* apprentice approach which we are actually using. So far, our realism has not been realistic enough.

The lawyer is a professional man, if indeed he is, by the further criterion that he uses specialized knowledge primarily to serve someone other than himself. The most obvious aspect of this role is that he owes primary fidelity to a client. It is a hard matter to estimate the historical realities of our achievement in this respect over the years. But by such objective testimony as we have of the growth of law practice, it is fair to say that lawyers have achieved a substantial working success in pursuing this inherently very difficult idea. Indeed, it is a difficult ideal in a society as aggressively individualistic as this one has been, to pursue the notion that a group of men will in honesty undertake to serve others before they serve their own interests. Yet, over the years, as the reach of law—particularly the reach of statute and administrative law—has become more pervasive in the affairs of society, clients have steadily brought to lawyers a wider range of problems responding to that greater pervasiveness of law. This factor in itself is testimony that we have kept the professional ideal in working order, however deficient may be our performance.

Time, however, has put the lawyer under higher tensions. We ought to recognize this fact. This society is marked by an increase in tensions. The bar cannot but share the tensions thus created. To an extent that we have not yet adequately explored, the modern lawyer is apt of multi-interest situations, rather than one-to-one relationship situa-

to find himself in conflict-of-interest situations that his nineteenth-century counterpart would not recognize. Moreover, there is a broader, a subtler tension here, that pertains to the economics of the bar in relation to the lawyer's obligations to his client. The greater pervasiveness of law in the client's affairs, the greater need in the society for skillful handling of more complicated facts and more intricate balancing of values, puts increasing demands on the lawyer to return to his nineteenth-century role as one of the community's practicing men of learning. Yet, there are only twenty-four hours in the day, and a lawyer is a human being, and a man who has to earn a living. More than we have realistically recognized, perhaps the greatest challenge to the lawyer's fidelity to the client today is whether he gives the client a good money's worth for the client's fee, by applying a wide enough and deep enough range of knowledge to the client's affairs. This is a real problem of the professional ideal in our generation. Again, we come back to the all too tardy and all too limited response of the schools and of the organized bar in assisting the practitioner by reducing to more efficient teachable proportions large areas of problems which the modern lawyer must cope with.

These considerations still deal, however, only with the lawyer's obligations to a client, with the lawyer as client caretaker. We must recognize, finally, that the professional ideal includes the notion of loyalty to the legal order. We are familiar with this in one conventional form of phrasing; we say that a lawyer is an officer of the court. The phrasing betrays our tendency to identify unduly the law with what goes on in courts. The conventional formula really stands for a broader proposition: a lawyer is an officer of legal order. As such, the bar should be a group of specialists to whom the general community can turn for something better than rule-of-thumb reactions—something that can fairly be called reactions based on considered learning and thought—when problems of the organization of power in society come in issue. Ours is a society in which problems of organized power come more and more, and not less and less into issue. This is certainly true regarding public power. The relative power of the political state vis a vis private persons has immensely increased over the last seventy-five years. This increase manifests itself in heightened problems regarding behavior in the market, regarding free speech, regarding the rights of the criminal accused, regarding problems of race in society. But the problems are not merely problems of growth of public power. They are also problems of the growth of great concentrations of private power. There was a day when we confronted these concentrations with the idea of trust-busting. That day has been behind us for some fifty years; our social structure is quite firmly fixed beyond recall—so far as one can now predict—in a form dependent not only on large-scale government

but on large-scale business and other large-scale private associations. These large private associations, no less than government, are capable of abuse of power. There are acute issues, many as yet unfaced, as to how we create legal responsibility within the structures of private bureaucracy. As large-scale business corporations, for example, deal with their suppliers, their customers, their labor force, or the general public, we must learn how to create in their domain something which is the equivalent of the ideals of due process and equal protection. For in a society in which the power of private organizations may dwarf the power of many states of the union, these ideals of constitutional power cannot be deemed relevant only to relations of public power to individuals.

What can we say of lawyers' response to these challenges? Until as recently as the last generation the organized bar showed little concern of effective sort for the lawyer's responsibilities toward problems of general organization of power in the society. The organized bar practically disappeared from the period shortly after the American Revolution until the last quarter of the nineteenth century. When it did revive, it was revived largely for social purposes, or for the specific aims of combatting corruption in municipal government. To some degree from the 1920's on the bar concerned itself with the unauthorized practice of the law. But it is a fair judgment that over the whole span from 1800 to about 1945 the organized bar was a sporadic, episodic, haphazard force in general public affairs, representing little or no coherent program of attention to problems of social order. As recently as since the end of World War II we have seen a marked and encouraging change in the concern of the organized bar for some problems of the general public policy. But this is so recent a phenomenon that its roots need a good deal more nourishment than they have had.

Looking, thus, at some 200 years of the bar, our history tells us that we will see the lawyer whole, only if we see him in several roles: as a man earning a living, as part of a collective agency of social order, as a professional man. In the light of these 200 years, we can say that the result of carrying three major roles has not been schizophrenia, but has added up to a meaningful amalgam of career, skill, and devotion, carrying the promise of personal fulfillment. One senses in this record a cumulative pattern, in which lawyers move from the business of earning a living, to the service of a field of special knowledge and of people in trouble, to the service of a way of life, which we call society under a decent regime of law.